

REMARKS

In connection with the Examiner's double patenting rejection, enclosed herewith is a Terminal Disclaimer relative to issued U.S. Patent No. 6,674,867. Additionally, it appears that there is a typographical error on the filing receipt which is submitted in marked-up form herewith for correction.

In rejecting claims 30, 31, 33, 37 and 38 as anticipated in view of Meyer, U.S. Patent 5,604,812, it appears that the Examiner has failed to apply the proper standard for anticipation. As set forth in the MPEP, § 2131, p. 2100-73 (MPEP, 8 Ed., Rev. 2 May 2004) in setting forth the standard of anticipation:

"The identical invention must be shown in as complete detail as is contained in the... claim... the elements must be arranged as required by the claim."

As explained below, many of the anticipation rejections do not comply with the above standard. The words of the rejected claims, in many instances, appear to have been ignored or not considered in the Examiner's expression in the Office Action as to why the respective claim is anticipated by the applied prior art patent.

We first turned to the teachings of Meyer. As described in Meyer:

"The above object is achieved in accordance with the principles of the present invention in a programmable hearing aid having an amplifier and transmission circuit, which is adjustable to different transmission characteristics, connected between a microphone and an earphone ... a signal analysis unit which determines control signals dependent on input quantities which characterize a current ambient auditory situation, and a data processing unit which provides hearing aid setting data for the amplifier, and transmission circuit from the data stored in the data memories and from control signals generated by the signal analysis unit, so that the transmission characteristics of the amplifier and transmission circuit are automatically and autonomously determined from the processed audiometric data, the hearing aid characteristic data, the algorithms, and the input quantities which are characteristic of the current ambient auditory situation.

The signal analysis unit is connected to the microphone, so that the input quantities which characterize the current ambient auditory situation are directly determinable by the signal analysis unit, without the signal analysis unit having to be 'instructed' or 'informed' by the wearer of the hearing aid. The ability of the programmable hearing aid of the invention to proceed on its own with the selection and setting of the transmission characteristics for the amplifier and transmission circuit, without human intervention, is encompassed within the meaning of 'automatically and autonomously,' as used herein.

As a result of the constant re-identification or recalculation of the setting parameters on site, i.e., in the hearing aid, a constant and continuous, automatic follow-up of the hearing aid setting to match the possibly constantly changing ambient conditions is achieved." (Col. 2, line 42 through Col. 3, line 10)

Thus, as clearly set forth above, Meyer's various embodiments respond automatically to the sensed ambient auditory situation and as stated therein: "without human intervention" make adjustments to the processing characteristics of the amplifier and the transmission circuit 4. Meyer's response to the transient, current, ambient auditory situation results in nonrepeatable amplifier and transmission circuit characteristics depending on the incoming ambient audio which is received at microphone 2 and sensed at the signal analysis unit 11. Thus, Meyer's circuitry is continually responding to transient incoming audio which is quite unlike the claimed invention.

Further, the systems in Meyer produce optimum setting parameters based on an instantaneous ambient situation. As stated therein:

"By contrast to known hearing aid adaptation systems, the inventively communicated data are not composed of direct setting parameter sets. The hearing aid of the invention has no memory wherein a plurality of direct hearing aid settings are stored for various ambient situations. The hearing aid setting optimally matched to the respective ambient situation is neither pre-stored in the hearing aid nor is it communicated [to the hearing aid]; it is calculated in the hearing aid and directly influences the signal processing of the hearing aid. The data information communicated wirelessly and/or by a hardwired connection contains general information with respect to the ambient conditions as well as with respect to individual impressions, instructions and personal (hearing impairment) data of the hearing aid wearer. ... the criteria for prevailing ambient conditions can be automatically calculated in the hearing aid and forwarded

together with the transmitted, individual impressions to the fuzzy logic and are processed therein." (Col. 3 line 29 through line 52)

Thus, the above clearly emphasizes the instantaneous and dynamic input of the ambient audio being received by the analysis unit 11. This automatic input, which is beyond user control, affects operational characteristics of the amplifier and transmission circuit 4.

In rejecting claim 30 as anticipated, the Examiner asserted that Meyer included "circuitry for presenting pre-stored sound stimuli to the hearing aid for user evaluation of the performance of the hearing aid using the programmed parameters (5, 7, 9, 30)." (page 3, Office Action)

However, the Examiner has failed to identify where in either unit 29 or unit 1 of Meyer the above-recited circuitry can be found. As noted previously, Meyer responds to instantaneously received audio via a signal analysis unit 11. This is quite unlike and can not correspond to the "pre-stored sound stimuli" referred to on line 6, page 3 of the Office Action. Anticipation as noted above requires that the respective prior art document expressly disclose the recited limitation in the claim being rejected. The Examiner has failed to identify where the cited "circuitry for presenting pre-stored sound stimuli to the hearing aid for user evaluation" can be found in either element, or 29 of Meyer.

Further, the Examiner then went on to assert that Meyer included "circuitry for receiving user feedback of the pre-stored sound stimuli for modifying current set of parameters forming an updated set of parameters that are downloaded in hearing aid (23). (See Fig. 3 and Col. 5, line 33 to Col. 6 line 11)" (Office Action page 3 lines 7 through 10.)

Device 23 is a user wireless control device that enables a user to make adjustments based on live, ambient conditions. The Examiner's above quoted assertion relative to the "circuitry for receiving user feedback of the pre-stored sound stimuli" is simply not found in either Fig. 3 or referred in Col. 5 line 33 to Col. 6 line 11. That portion of Meyer is completely silent as to the "circuitry for receiving user feedback of the pre-stored sound stimuli" referred to by the

Examiner. Indeed, claim 30 includes at least the following limitations completely missing from Meyer:

"circuitry for presenting pre-stored sound stimuli to the hearing aid for user evaluation of the performance of the hearing aid using the program parameters; and circuitry for receiving user feedback of the pre-stored sound stimuli and for modifying the current set of parameters forming an updated set of parameters that are downloaded to the hearing aid."
(Claims 30 through 33)

In rejecting a claim in view of alleged anticipation, the same structure must be presented in the alleged anticipating document in a form as claimed. Unlike the claimed structure, Meyer responds to instantaneous audio input from microphone 2 via signal analysis unit 11 to produce control signals 13. This is quite different and unlike the claimed structure. Thus, for at least the above reasons none of claims 30, 31, 33, 37 or 38 are anticipated by Meyer.

In the rejecting others of the claims as obvious an unpatentable over Meyer the Examiner continued to misstate the characteristics of Meyer. For example:

"the processor for presenting pre-stored audio stimuli to the hearing aid and circuitry for receipt of real-time feedback from a user of the hearing aid, the feedback being related to the presented pre-stored audio stimuli" (Page 4 of Office Action)

Further, at the bottom of page 4, the Examiner also stated:

"However, Meyer teaches data and algorithms stored in memory for presenting pre-stored audio stimuli"

As described above, Meyer responds to instantaneous audio input. Meyer does not pre-store audio stimuli as asserted by the Examiner and quoted above. Meyer never presents pre-stored audio for user evaluation. Similar quotations appear on page 5 for example when the Examiner stated:

"Regarding claims 22 and 23, Meyer discloses repetitively presenting the audio stimuli and in response to user feedback, repetitively modifying the parameters thereby providing an optimized set of parameters"

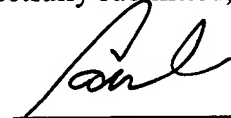
However, the above is referring to dynamically received audio from microphone 2 which is received by signal analysis unit 11 which is quite unlike the claimed "pre-stored audio stimuli" of claims 19-29, 32 and 34 through 36.

The Examiner has failed to identify any suggestion, motivation or teaching in Meyer which would cause one of ordinary skill in the art to modify Meyer so as to make any of the rejected claims obvious. Indeed, Meyer's focus on instantaneous audio feedback teaches away from the claimed structures. The lack of an identifiable motivation, suggestion or teaching as required by both the MPEP and the Federal Circuit results in a defective obviousness rejection which should be withdrawn.

For at least the above reasons, all of the pending claims are allowable. Allowance of the application is respectfully requested.

Respectfully submitted,

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Dated: May 17, 2005
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